

430

PIPER & MARBURY

1100 CHARLES CENTER SOUTH

36 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

301-539-2530

TELECOPIER 301-539-0489

CABLE 'PIPERMAR BAL'

TELEX 908054

RECORDATION NO. 16049-H

DEC 28 1989 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

1200 NINETEENTH STREET, N.W.

WASHINGTON, D.C. 20036

202-861-3900

WRITER'S DIRECT NUMBER

(301) 576-7796

December 28, 1989

9-362A079

BY HAND

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N. W.
Washington, D. C.

Dear Ms. McGee:

Enclosed are two originals and two copies of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Assignment, a secondary document, dated as of December 1, 1989, and executed by PHH Financial Services, Inc. for the benefit of New England Merchants Funding Corporation. The primary document to which this document is connected is the Master Equipment Lease Agreement between PHH Financial Sources, Inc. and Horsehead Industries, Inc., previously filed with the Interstate Commerce Commission under Recordation No. 16049-D.

The names and addresses of the parties to the Assignment are as follows:

Assignor: PHH Financial Services, Inc.
11333 McCormick Road
Hunt Valley, Maryland 21031

Assignee: New England Merchants Funding Corporation
28 State Street
Boston, Massachusetts 02109

Beth M. Hopkins
C. O. O'Connell

Ms. Noreta R. McGee
December 28, 1989
Page 2

PIPER & MARBURY

The equipment covered by the above document consists of 50 used railroad gondola cars and all improvements thereto, identified by the manufacturer, car number and year built on Exhibit A attached hereto.

A fee of \$15.00 is enclosed. Please return an original of the document and any extra copies not needed by the Commission for recordation to the undersigned.

A short summary of the document to appear in the index is as follows:

Assignment of Master Equipment Lease Agreement and Schedules No. 1 and No. 2 thereto, Recordation Nos. 16049-D, 16049-E and 16049-G, respectively, executed by PHH Financial Services, Inc., 11333 McCormick Road, Hunt Valley, Maryland 21031, for the benefit of New England Merchants Funding Corporation, 28 State Street, Boston, Massachusetts 02109, dated as of December 1, 1989 and covering 50 railroad gondola cars.

Very truly yours,


Randall D. Sones

Enclosure
cc: William F. Brown, Esquire

EQUIPMENT LISTING

The following Car numbers represent fifty (50) 40', 2200 cubic feet, 100 ton Gondolas manufactured by the Midwest Freight Car Company in 1976:

MQCX-2	MQCX-29
MQCX-3	MQCX-30
MQCX-4	MQCX-31
MQCX-5	MQCX-32
MQCX-6	MQCX-33
MQCX-7	MQCX-34
MQCX-8	MQCX-35
MQCX-9	MQCX-36
MQCX-10	MQCX-37
MQCX-11	MQCX-38
MQCX-12	MQCX-39
MQCX-13	MQCX-40
MQCX-14	MQCX-41
MQCX-15	MQCX-42
MQCX-16	MQCX-43
MQCX-17	MQCX-44
MQCX-18	MQCX-45
MQCX-19	MQCX-46
MQCX-20	MQCX-47
MQCX-21	MQCX-48
MQCX-22	MQCX-49
MQCX-23	MQCX-50
MQCX-24	MQCX-51
MQCX-25	MQCX-52
MQCX-26	MQCX-53
MQCX-27	MQCX-54
MQCX-28	MQCX-55
	MQCX-56

Interstate Commerce Commission
Washington, D.C. 20423

12/28/89

OFFICE OF THE SECRETARY

Randall D. Sones
Piper & Marbury
1100 Charles Center South
36 South Charles St
Baltimore ,MD. 21201

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/28/89 at 2:45pm , and assigned recordation number(s). 16049-H & 16049-I

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

ASSIGNMENT

RECORDATION NO. 160428
DEC 28 1989 - 2 45 PM
FILED 125
INTERSTATE COMMERCE COMMISSION

RE: Master Equipment Lease Agreement dated as of August 8, 1989,, and entered into between PHH Financial Services, Inc. ("Assignor"), as lessor, and Horsehead Industries, Inc. ("Lessee"), as lessee, with its principal place of business at 204 East 39th Street, New York, New York 10016.

For and in consideration of the payment to the Assignor of the sum of \$1,131,351.72 (the "Purchase Price") by New England Merchants Funding Corporation (the "Assignee"), a Massachusetts corporation with its principal place of business at 28 State Street, Boston, Massachusetts 02109, the receipt of which is hereby acknowledged, the Assignor hereby unconditionally and irrevocably assigns, sells, transfers and sets over to the Assignee, and its successors and assigns, without recourse, except as hereafter provided, (i) the above-referenced Lease, all schedules, riders, exhibits, addenda, amendments, supplements and lease acceptances thereto (collectively the "Lease"), all rental payments due and to become due under the Lease, all of the Assignor's rights, title and interests (including, without limitation, any security interest) in and to all of the property leased under the Lease (the "Equipment", which term includes all attachments, accessions, additions, improvements, replacements and substitutions thereto and therefor), and all of the Assignor's rights, title, interests and remedies in, to and under the Lease, including, without limitation, the right to all rental and all other payments due and to become due thereunder, all sums and monies due and to become due in connection with the exercise by the Lessee of any option, or in connection with any obligation of the Lessee, to purchase any of the Equipment, all amounts payable in connection with any loss, damage or destruction of any of the Equipment and any early termination or cancellation of the Lease with respect to any of the Equipment, all insurance proceeds, condemnation awards and other monies and security payable to or receivable by the Assignor with respect to any of the Equipment, all amounts and damages payable by the Lessee in the event of a default by the Lessee under the Lease, and the right to take, in the Assignor's or the Assignee's name, any and all proceedings, legal, equitable, or otherwise, that the Assignor might otherwise take in enforcing the Lease, but for this Assignment; and (ii) all of the Assignor's rights and remedies under, and all amounts payable under, any guaranty or guarantees of the Lessee's obligations under the Lease (the "Guarantee(s)"), and any purchase agreement(s) or similar undertaking(s), relating to any obligation of the Lessee or any other party to purchase the Equipment (the "Purchase Agreement(s)"). The Lease, all such Guarantee(s) and Purchase Agreement(s), all rights, title, interests and remedies of the Assignor therein, thereto and thereunder and all rental payments and all other sums and monies payable thereunder, and the Equipment, are hereinafter collectively called the "Purchased Collateral". The Assignee shall have none of the obligations of the Assignor under the Lease or any Purchase Agreement(s) or Guarantee(s). The Assignor represents and warrants that the Assignor has good right and full

authority to execute this Assignment, and such execution and the compliance by the Assignor with the terms hereof does not and will not violate the terms or provisions of any contract or indenture to which the Assignor is or may become a party; the Purchased Collateral is free and clear of all liens, encumbrances, security interests or other rights and claims (except for those in favor of the Assignee and the encumbrances created by the Lease itself); the Lease, any Guarantee(s) and Purchase Agreement(s) have been duly authorized and are each genuine, valid, binding and enforceable in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, in full force and effect, and the Lease is the only lease executed concerning the Equipment; the Lessee is not in default under the Lease; the obligations of the Lessee to pay the rentals and all other sums under the Lease, and the payment obligations under any Guarantee(s) and Purchase Agreement(s), are absolute and unconditional, and the right of the Assignee to receive payment of all such rentals and other sums under the Lease and all sums under any such Guarantee(s) and Purchase Agreement(s), are now and will continue to be free from any and all defenses, set-offs and counterclaims whatsoever, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally; all executed counterparts of the Lease and any such Guarantee(s) and Purchase Agreement(s) (excluding those which have been marked to indicate that they are not the original) have been delivered to the Assignee, and all signatures, names, addresses, amounts and other statements and facts contained therein are true and correct and, to the best of Assignor's knowledge without having made any inquiry into the same, the representations and warranties of the Lessee in the Lease are true and correct; neither the Lease nor any such Guarantee(s) or Purchase Agreement(s) have been modified or amended in whole or in part except to the extent, if any, as has been disclosed to the Assignee by the Assignor in writing, and if any such modification or amendment has been made, all executed counterpart(s) of same (excluding those which have been marked to indicate that they are not the original) have been delivered to the Assignee; the aggregate amount of the rentals remaining to be paid by the Lessee under the Lease, and the number of rental installments and the amount of same shown below, is correct; the amount of any advance rental retained by the Assignor as shown below is correct; the amount of the Lessee's (or any other party's) purchase option or obligation with respect to the Equipment or any part thereof shown below is correct; the Equipment has been delivered to the Lessee under the Lease in satisfactory condition, has been unconditionally accepted by the Lessee on the date shown below, and has been leased under, and is subject to all of the terms, conditions and provisions of, the Lease; the Assignor will comply with all of its representations, warranties and other obligations with respect to the Equipment and as set forth in the Lease or otherwise; the Lease transaction conforms to all applicable laws and regulations; the Lessee has no purchase, renewal, early termination or cancellation rights or options except to the extent otherwise expressly set forth in the Lease or in any other

written instrument heretofore or herewith delivered to the Assignee; by virtue hereof, the Assignee has obtained good and marketable title to, or a valid first lien upon and security interest in, the Purchased Collateral, free of all liens, encumbrances, security interests or claims or rights of others therein or thereto, except those in favor of the Assignee and the encumbrance created by the Lease itself, and if filing, recordation or any other action or procedure is required by statute to perfect such title or such lien and security interest, the same has been duly accomplished so as to give such title or lien and security interest priority over, and such title or lien and security interest has priority over, any and all other liens, encumbrances, security interests, titles or claims in, to or on the Purchased Collateral or any part thereof; the Assignor has not sold, assigned, transferred, granted a security interest in, mortgaged, pledged or hypothecated, and will not sell, assign, transfer, grant a security interest in, mortgage, pledge or hypothecate, any of the Purchased Collateral to any party (excluding the assignment, sale and transfer to the Assignee hereunder); all representations, warranties and certifications made by the Assignor to the Assignee in any letter, document, instrument or certificate, heretofore, contemporaneously herewith, or hereafter delivered to the Assignee shall be true and correct when made; the Assignor will do, execute, acknowledge and deliver all and every further acts, instruments, and assurances reasonably requested by the Assignee in order to give effect to or to more fully perfect the assignment and sale made hereunder, and the Assignor will pay (or cause the Lessee to pay) for all lien searches and recording and filing fees in connection herewith and with the Lease and the Equipment. If any of the foregoing representations or warranties shall prove to be untrue or incorrect or are breached by the Assignor, or if the Assignor fails to comply with its other agreements herein, the Assignor unconditionally agrees that it will indemnify and keep harmless the Assignee and its successors, assigns, agents and servants (each such person being herein referred to as an "indemnified person") from and against, any and all liabilities, obligations, losses (including failure to receive any payment due from the Lessee under the Lease), damages, penalties, taxes (such term "taxes" excluding, however, any income taxes of an indemnified person), claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses or disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against any indemnified person in any way relating to or arising out of the Lease or this Assignment, or the performance or enforcement of any of the terms of any thereof.

All of the Assignee's rights, title and interests hereunder may be assigned by the Assignee. The Assignor gives express permission to the Assignee to release on terms satisfactory to the Assignee or by operation of law or otherwise, or to compromise or adjust, any and all rights against, and grant extensions of time of payment to, the Lessee or any other person(s) obligated under the Lease or any such Guarantee(s) or Purchase Agreement(s), or to agree to the substitution

of a lessee or guarantor, without notice to the Assignor and without affecting the Assignor's obligations hereunder. The Assignor agrees that it shall have no authority to, and will not, without the Assignee's prior written consent, make any demands for payment of any rentals or other sums or monies under, or accept any rental or any other payments whatsoever under, or exercise any rights or remedies under, or consent to any amendment, modification, waiver or breach of any of the terms or provisions of, or a termination of, the Lease or any such Guarantee(s) or Purchase Agreement(s), or take any action thereunder or pursuant thereto with respect to the Equipment or otherwise. The Assignor agrees that all rental and all other payments whatsoever which may hereafter be received by the Assignor pursuant to the Lease shall be promptly paid over to the Assignee, and the Assignee is hereby granted an irrevocable power of attorney to endorse, in the Assignor's name, such remittances over to the Assignee. The Assignee's knowledge at any time of any breach of or non-compliance with any of the foregoing shall not constitute any waiver by the Assignee. The Equipment was accepted by the Lessee on September 30, 1989. The aggregate amount of the rentals remaining to be paid by the Lessee under the Lease is \$1,658,718.00, payable in eighty-one (81) monthly installments of \$20,478.00 on the last day of each month commencing on December 31, 1989. The amount of the Lessee's purchase option or obligation with respect to the Equipment is \$1.00. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Maryland. The Assignor waives notice of the acceptance hereof.

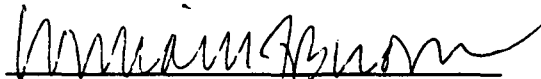
Dated as of December 1, 1989

PHH FINANCIAL SERVICES, INC.

By: 

Title: 

Attest: _



Assistant Secretary
(seal)

ACKNOWLEDGEMENT

State of Maryland

County of Baltimore. ss:

On this 21st day of December, 1989 before me personally appeared, Daniel E. McKew and William F. Brown, to me personally known, who being by me duly sworn, say that they are the Vice President and Assistant Secretary of PHH Financial Services, Inc., respectively, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Mary K. Whitener
Notary Public

My commission expires July 1, 1990

